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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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HOWARD YOUNG,  
Petitioner,  
v.  
C. PFEIFFER,  
Respondent.

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Case No. 18-cv-06929-RS (PR)

**ORDER OF DISMISSAL**

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12 For the third time, petitioner seeks federal habeas relief from his 1992 state  
13 convictions for kidnapping and second degree burglary. He received a sentence of 3 years  
14 for the kidnapping conviction and a concurrent sentence of 16 months for the burglary  
15 conviction. (Pet., Dkt. No. 1 at 11, 14-15.) Because it is more than 26 years after these  
16 sentences were imposed, petitioner cannot be in custody for these offenses. Because he is  
17 not in custody, the Court lacks jurisdiction over this petition. The federal writ of habeas  
18 corpus is only available to persons “in custody” at the time the petition is filed. *See* 28  
19 U.S.C. §§ 2241(c), 2254(a). This requirement is jurisdictional. *Carafas v. LaVallee*, 391  
20 U.S. 234, 238 (1968).

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This is not petitioner’s first attempt to obtain federal habeas relief for this  
conviction. In 2015, in one petition he challenged his 1992 conviction along with a 2006  
conviction. *Young v. Pfeiffer*, 15-03970. Because it was not permissible to challenge two  
unrelated convictions in one petition, petitioner was ordered to file an amended petition in  
which he challenged just one. (*Id.*, Dkt. No. 28.) He never complied with these  
instructions. As a result, his petition was dismissed. (*Id.*, Dkt. No. 35.) The case was later  
reopened at his request. (*Id.*, Dkt. No. 40.) When he again failed to comply with the  
Court’s instructions, the petition again was dismissed. (*Id.*, Dkt. No. 43.) A motion to

1 reconsider was denied because petitioner had failed to comply with the Court's  
2 instructions. (*Id.*, Dkt. No. 46.)

3 In 2016, petitioner again filed suit in this district to challenge his 1992 conviction.  
4 *Young v. Pfeiffer*, 16-04329. Petitioner was ordered to show cause why the habeas petition  
5 should not be dismissed for want of jurisdiction, petitioner then, as now, not being in  
6 custody on that conviction. (*Id.*, Dkt. No. 8.) He filed nothing in response by the deadline.  
7 The suit was dismissed for that reason. (*Id.*, Dkt. No. 10.) He filed for reconsideration on  
8 grounds that the 1992 conviction was used to enlarge his 2006 sentence, thereby rendering  
9 him in custody under the 1992 conviction. (*Id.*, Dkt. No. 14.) This argument was rejected:

10 Petitioner is not in custody for his 1992 convictions. Rather, petitioner is in  
11 custody for a later conviction, the sentence for which was increased  
12 because of the 1992 convictions. This is easily demonstrated. If his later  
13 conviction was voided, his sentence for that conviction, enhancements and  
14 all, would be voided as well. He could not be held on the 1992 convictions,  
15 the sentences for which expired two decades ago. Because he is not in  
16 custody on the 1992 convictions, this Court lacks jurisdiction over his  
17 petition.

18 (*Id.*, Dkt. No. 14 at 2.) A subsequent motion for a stay was denied as moot. "There is no  
19 operative action on which to impose a stay." (*Id.*, Dkt. No. 16.)

20 There is no basis for the current petition: the facts have not changed and the law  
21 has not changed. The petition is DISMISSED. The Clerk shall enter judgment in favor of  
22 respondent and close the file. The filing fee has been paid. (Dkt. No. 3.)

23 **IT IS SO ORDERED.**

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28 **Dated:** January 2, 2019



RICHARD SEEBORG  
United States District Judge